

Appn. Number 10/050,520 Giewercer GAU 2859 Amnt. AFA, contd. 5

REMARKS -- General

By the above amendment, Applicant has rewritten all claims to define the invention more particularly and distinctly to overcome the technical rejections and define the invention patentably over the prior art.

The Rejection Of Claim 33 Is Overcome

As The Claim Is Definite

The last OA rejected dependant claim 33 as being indefinite. Claim 33 has been rewritten as definite claim 54. New dependent claim 54 incorporates all the subject matter of claim 40 and further adds additional subject matter which makes it patentable.

Applicant requests reconsideration of this rejection, as now applicable to claim 54.

The Rejection Of Claims 19-25, 28-31, 34, 36, 37, And 38 On Hoffman Are Overcome

As The Rewritten Claims Recite Novel Physical Features

The last OA rejected independent claims 19, 34, and 38 (Please note: 38 omitted from detail in OA, but assumed.) and dependant claims 20-25, 28-31, 36, and 37 on Hoffman. Claims 19, 34, and 38 have been rewritten as new claims 40, 55, and 39 respectively to define patentability over these references. Claims 20-25, 28-31, 36, and 37 have been rewritten as new claims 41-46, 49-52, 57, and 58 respectively to define patentability over these references. Applicant requests reconsideration of this rejection, as now applicable to claims 40, 55, and 39 and to claims 41-46, 49-52, 57, and 58 for the following reasons:

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(1) The rotatable ring in the Hoffman invention is constructed as a formed split ring (i.e. discontinuous loop), relying on this expandable construction for the ability to mount and dismount the ring on the wall of the container, and for the ability to displace the mounted ring correctly in operation. There is no suggestion that the ring could be formed as a continuous loop and mounted, or mounted and then formed into a continuous loop or that a continuous loop ring could be made to work. Hoffman also specifically teaches in the opposite direction, preferring that the split ring have separated ends (column 2, lines 43-45). The ends of the mounted ring separating when engaging the tapered flange structure (28) in order to expand the ring and permit the ring to rotate (column 2, lines 31-32).

(2) Hoffman also does not disclose a substantially rectilinear band member or means for forming such a band member into a loop mounted around the exterior side surface of a cylindrical container.

(3) New dependant claims 41-46 incorporate all the subject matter of claim 40 and add additional subject matter which makes them patentable over these references.

(4) New dependant claims 50-52 incorporate all the subject matter of claim 40 and add additional subject matter which makes them patentable over these references.

(5) New dependant claim 49 is not a "product by process" claim and incorporates all the subject matter of claim 40 and adds additional subject matter which makes it patentable over these references.

(6) Normal use of the device disclosed by Hoffman does not comprise the method steps as described in claims 55, 57 and 58.

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**The Novel Physical Features Of Claims 47, 48, 53, and 56 Produce
New And Unexpected Results And Hence Are Unobvious
And Patentable Over These References Under § 103.**

Also applicant submits that the novel physical features of claims 47, 48, 53, and 56 are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Hoffman.

These new and unexpected results are a simpler, safer and lower cost device than the reference. Applicant's device permits the continuous loop member to be rotated to a plurality of selected positions when mounted. This provides greater safety because of the relative permanence of applicant's loop member, which is not as easily removed as the Hoffman split ring. The applicant's band can be produced from thin low cost sheet or roll stock materials such as paper and plastic film, which need not be molded (ex. a substantially rectilinear band). An advantage of such lightweight material being formed into a loop is that it permits the use of comparable material for the band support, providing further savings. The applicant's device can fill a prescription with fewer components and without loss of capability because it allows a prescription label to serve as a band support. An additional advantage is that the mounted loop can be held sufficiently secure at a plurality of positions around the container to obviate the need for a tapered flange structure like the one required by Hoffman to control axial and rotational displacement of a split ring. Capability is therefore further enhanced because applicant's device can be used with most existing cylindrical medication containers. A still further advantage of applicant's device is that application of both the band and band support is easily automated by adaptation of label application technology in widespread use today. Applicant's device is therefore vastly superior to that of Hoffman.

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The Rejection Of Claims 26, 27, 32, and 35 On Hoffman And Baustin Are Overcome

The last OA rejected dependent claims 26, 27, 32, and 35 on Hoffman and Baustin. Claims 26, 27, 32, and 35 have been rewritten as new claims 47, 48, 53, and 56 respectively to define patentability over these references. Applicant requests reconsideration of this rejection, as now applicable to claims 47, 48, 53, and 56 for the following reasons:

- (1) New dependent claim 47 incorporates all the subject matter of claim 40 and further adds additional subject matter which makes it patentable over these references. Hoffman does not disclose the device. Baustin does not disclose a deformable band support.
- (2) New dependent claim 48 incorporates all the subject matter of claim 40 and adds additional subject matter which makes it patentable over these references. Hoffman does not disclose the device. Baustin does not disclose a deformable band support.
- (3) New dependent claim 53 incorporates all the subject matter of claim 40 and adds additional subject matter which makes it patentable over these references. Hoffman does not disclose the device. Baustin does not disclose a deformable band support or deformable prescription label.
- (4) New dependent claim 56 incorporates all the subject matter of claim 55 and adds additional subject matter which makes it patentable over these references. Normal use of the device disclosed by Hoffman does not comprise the method steps as described in this claim.
- (5) These novel physical features of claims 47, 48, 53, and 56 produce new and unexpected results and hence are unobvious and patentable over these references.

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Conclusion

For all of the above reasons, applicant submits that the claims are now in proper form, and that the claims all define patentability over the prior art. Therefore the applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

Very respectfully,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I certify that on the date below I will fax this communication, and attachments if any, to Technology Center 2800 of the Patent and Trademark Office at the following number (703) 872-9319.

Date: 06/18/03 No. of pages: 9

Inventor's Signature: *H. Giewercer*